IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR
S.B. Civil Writ Petition No.3673/07
O. Gangadharan & Anr.
Vs.
Smt. Godawari Chelani & Ors.

24.5.2007

Hon'ble Mr. Justice Mohammad Rafiq

Shri Nazimuddin Siddiqui for petitioner.
Shri Shailesh Prakash for respondents.

Heard learned counsel for the parties.

Challenge in this petition has been made to the order dated 24.4.07 whereby the application filed by the petitioners under Order 6 Rule 17 CPC seeking amendment in the written statement was rejected. The amendment

in the written statement was to the effect that the provisions contained in Section 13(4) of the Rajasthan Premises (Control of Rent and Eviction) Act, 1950 are arbitrary and unreasonable in as much as the same were violative and ultra vires of the provisions of Article 14 of the Constitution. The amendment was also sought to the effect that the provisions of Section 13(4) of the Act are recognant to Section 5 of the Limitation Act and to that extent was liable to be declared void. The additional plea that was sought to be added was that while Act of 1950 was enforced in the Act by the President whereas the Limitation Act has been

enacted by the Parliament and enforced after the approval of President. Learned counsel for the petitioners while relying on the subordinate bench judgment of this Court in Pyare Lal Vs. Banwari Lal, RLR 1982 page 454 argued that the argument with regard to violation of Article 14 should be raised in a suit only if the necessary facts to sustain that argument were ... before the trial court. The learned counsel for the petitioners submitted that the trial court committed an error of law in not appreciating that the amendments were very necessary because the issue with regard to second default and condonation of single day in making

the payment of rent was involved which could not be effectively adjudicated upon by the trial court in the absence of amendments prayed for.

Learned counsel for the respondents however opposed the writ petition and argued that the petitioner has been making repeated application one after the other with the sheer purpose of delaying the proceedings in the trial court. While supporting the impugned order, the learned counsel submitted that the trial court has passed a reasoned and detailed order in refusing to permit the amendments. He therefore prayed that the writ petition be dismissed.

Having heard the learned

counsel for the parties and gone through the material on record, I find that the learned trial court has made elaborate discussion while refusing to permit the desired amendments. The learned trial court found that those amendments were not at all necessary for deciding the controversy involved in the matter. In fact the trial court observed that in the scope of civil suit, the amendments should not be allowed to be made for the purpose of assailing constitutional validity of Section 13(4) of the Act of 1950 which jurisdiction was reserved to only this Court and the Hon'ble Supreme Court. In fact the question whether or not Section 5 of the Limitation Act would

be applicable for condonation of delay in making delayed payment of rent in the context of Section 13(4) & (5) has been conclusively decided by Hon'ble Supreme Court in Nasiruddin & Ors. Vs. Sita Ram Agarwal, 2003(1) WLC (SC) Civil 293.

In the facts of the case, therefore, I do not find that the learned trial court committed any error of law in rejecting the application. The impugned order does not suffer from any error which may warrant interference by this Court.

The writ petition is dismissed.

(Mohammad Rafiq),J.

Rs/-